

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

SOUTHERN DIVISION

I.S.B., also known as Inmates)	CIV. 10-4142-KES
Strikes Back;)	
WILLIE REED IV, Chairperson of)	
I.S.B.;)	
THANH QUANG NGO, Chairperson)	
of the First District Inmates)	
Constitutional Rights Committee;)	
ERIC WHITE, Chairperson of the)	ORDER DENYING MOTION FOR
Second District Inmates)	RECONSIDERATION
Constitutional Rights Committee;)	
GARY FEDDERSON, Chairperson of)	
the Third District Inmates)	
Constitutional Rights Committee;)	
PAUL HANSON, Chairperson of the)	
Fourth District Inmates)	
Constitutional Rights Committee;)	
ELIAS JOHNSON, chairperson of the)	
Fifth District Inmates Constitutional)	
Rights committee; TIMOTHY)	
MADDOX, Representative member)	
for inmates convicted in the First)	
Circuit Court;)	
SHARIF NURADIN, Representative)	
member for inmates convicted in the)	
Second Circuit Court;)	
DARREL GRIM, Representative)	
member For Inmates convicted in)	
the Third circuit court;)	
BLAIN BAILEY, Representative)	
member for inmates convicted in the)	
Fourth Circuit Court; MICHAEL)	
SULLIVAN, Representative member)	
for inmates convicted in the Fifth)	
Circuit Court;)	
STANLEY REED, Representative)	
member For Inmates convicted in)	
the Sixth circuit court;)	
)	

STEWART MOUSSEAU,)
 Representative member for inmates)
 convicted in the Seventh Circuit)
 Court;)
 REPRESENTED CLASS OF)
 INMATES INCARCERATED; DANIEL)
 LEE ELLENDORF, Chairperson of)
 The contingent Constitutional Rights)
 Committee;)
 CHRISTOPHER JOHN WALDNER,)
 Representative member of The)
 Contingent Constitutional Rights)
 Committee;)
 NICHOLAS RYAN HEMSHER,)
 Representative member of The)
 Contingent Constitutional Rights)
 Committee;)
 NICHOLAS QUENTIN ANDERSON,)
 Representative member of The)
 Contingent Constitutional Rights)
 Committee;)
 RAMON VALERIO GARCIA,)
 Representative member of The)
 Contingent Constitutional Rights)
 Committee;)
 JEREMY KUNZE, member of)
 Contingent Constitutional Rights)
 Committee of I.S.B., et. al.;)
 DONALD INGALLS, member of)
 Contingent Constitutional Rights)
 Committee of I.S.B., et. al.; and)
 RALPH BUCHHOLD, member of the)
 Fourth District Inmates)
 Constitutional Rights Committee of)
 I.S.B., et. al,)
 ZACHARY T. ARVIN;)
 JAMES R. JAMES;)
 CLAY STUBBS;)
 JAKE LEVI BRINGS THREE WHITE)
 HORSES a/k/a Levi Brings Three)
 White Horses,)
)
 Plaintiffs,)

vs.)
)
STATE OF SOUTH DAKOTA)
COMMISSIONER OF)
ADMINISTRATION, person or)
persons;)
SOUTH DAKOTA DEPARTMENT OF)
REVENUE & REGULATIONS, Div.)
of Insurance, person or persons;)
SOUTH DAKOTA BUREAU OF)
PERSONNEL, person or persons;)
SOUTH DAKOTA DEPARTMENT OF)
HEALTH AND HUMAN)
SERVICES, person or persons;)
TIM REISCH, South Dakota)
Department of Corrections Cabinet)
Secretary;)
DOUGLAS WEBER, South Dakota)
Department of Corrections, Warden,)
Director of prison operations;)
SOUTH DAKOTA DEPARTMENT OF)
CORRECTIONS, State Penitentiary)
person or persons; SOUTH DAKOTA)
DEPARTMENT OF CORRECTIONS,)
Jameson Annex, person or persons;)
SOUTH DAKOTA DEPARTMENT OF)
CORRECTIONS, Mike Durfee State)
Prison, person or persons;)
SOUTH DAKOTA DEPARTMENT OF)
CORRECTIONS, Rapid City)
Minimum Unit, person or persons;)
SOUTH DAKOTA DEPARTMENT OF)
CORRECTIONS, Women's Prison,)
person or persons;)
SOUTH DAKOTA DEPARTMENT OF)
CORRECTIONS, Yankton Minimum)
Unit, person or persons;)
STATE SOUTH DAKOTA PAROL)
BOARD OF PARDON, Person or)
persons;)
STATE SOUTH DAKOTA FIRST)
CIRCUIT COURT, person or persons;)

STATE SOUTH DAKOTA SECOND)
 CIRCUIT COURT, person or persons;)
 STATE SOUTH DAKOTA THIRD)
 CIRCUIT COURT, person or persons;)
 STATE SOUTH DAKOTA FOURTH)
 CIRCUIT COURT, person or persons;)
 STATE SOUTH DAKOTA FIFTH)
 CIRCUIT COURT, person or persons;)
 STATE SOUTH DAKOTA SIXTH)
 CIRCUIT COURT, person or persons;)
 STATE SOUTH DAKOTA SEVENTH)
 CIRCUIT COURT, person or persons;)
 LAWRENCE COUNTY PUBLIC)
 DEFENDER OFFICE, person or)
 persons;)
 MINNEHAHA COUNTY PUBLIC)
 DEFENDER OFFICER, person or)
 persons;)
 PENNINGTON COUNTY PUBLIC)
 DEFENDER OFFICE, person or)
 persons;)
 MARTY J. JACKLEY, Attorney)
 General, State of South Dakota; ANN)
 C. MEYER, Assistant Attorney)
 General, State of South Dakota;)
 GINA S. NELSON, Deputy State's)
 Attorney, Pennington County SD;)
 JAMES IOSTY, Deputy State's)
 Attorney, Minnehaha County SD;)
 PATRICK T. PARDY, Deputy State's)
 Attorney, Miner County SD;)
 LORA ROETZEL, Deputy State's)
 Attorney, Pennington County SD;)
 COLLEEN MORAN, Deputy State's)
 Attorney, Minnehaha County SD;)
 ERIC K. JOHNKE, Deputy State's)
 Attorney, Yankton County SD;)
 AARON MCGOWAN, Deputy State's)
 Attorney, Minnehaha County SD;)
 KERRY M. CAMERON, State's)
 Attorney, Roberts County SD;)
 JOHN FITZGERALD, State's)
 Attorney, Lawrence County SD;)

GLENN BRENNER, State's Attorney,)
 Pennington County, SD;)
 Deputy States Attorney-County)
 Attorney- States Attorney- Assistant)
 Attorney General- Deputy Attorney)
 General-Attorney General-District)
 Attorney-Prosecuting Attorney- Public)
 Defender of the Represented Class of)
 Inmates incarcerated to Which such)
 matters of the cause affects and/or)
 affected in this class action lawsuit, in)
 the State of South Dakota;)
 All the circuit court Judges, of the)
 First, Second, Third, Fourth, Fifth,)
 Sixth, and Seventh circuit court in the)
 state of South Dakota to which such)
 matters of this class action law suit)
 involved;)
 SOUTH DAKOTA STATE DIETICIAN,)
 person or persons; C.B.M.,contracted)
 with the Department of Correction of)
 South Dakota;)
 ROBERT DOOLEY, Warden, Mike)
 Durfee State Prison;)
 CAPT. DOYLE, Correctional Officer,)
 Mike Durfee State Prison;)
 LT. KAUFENBERG, Special Security,)
 Mike Durfee State Prison; LAWRENCE)
 COUNTY COMMISSIONER, person or)
 persons;)
 PENNINGTON COUNTY)
 COMMISSIONER, person or persons;)
 HUGHES COUNTY COMMISSIONER,)
 person or persons;)
 ROBERTS COUNTY COMMISSIONER,)
 person or persons;)
 MINER COUNTY COMMISSIONER,)
 person or persons;)
 MEADE COUNTY COMMISSIONER,)
 person or persons;)
 MINNEHAHA COUNTY)
 COMMISSIONER, person or persons;)
)

YANKTON COUNTY COMMISSIONER,)
person or persons;)
BON HOMME COUNTY)
COMMISSIONER, person or persons;)
ED LIGTENBERG, Director of South)
Dakota Parole Board of Pardon;)
DEBRA C. FLUTE, Member of South)
Dakota Parole Board of Pardon;)
JAMES P. SMITH, Member of South)
Dakota Parole Board of Pardon;)
PATRICIA MEYERS, Member of South)
Dakota Parole Board of Pardon;)
KEITH BONENBERGER, Member of)
South Dakota Parole Board of Pardon;)
JESSE SONDRER, Member of South)
Dakota Parole Board of Pardon;)
KAY F. NIKOLAS, Member of South)
Dakota Parole Board of Pardon; DAVE)
NELSON, Member of South Dakota)
Parole Board of Pardon; MIKE)
ROUNDS, Governor of the State of)
South Dakota;)
JOHN E. HAAK, Prosecutor, SD)
Assistant Attorney General of SD,)
2000-2001;)
JOHN R. STEELE, Prosecutor, Aurora)
County SD;)
MATCHAN, Prosecutor, Minnehaha)
County SD; and)
VINCE FOLEY, Prosecutor, Codington)
County, SD;)
)
Defendants.)

Plaintiff, Willie Reed, was denied in forma pauperis status because of his status as a “three-strikes” litigant and was dismissed as a plaintiff from this case. See Docket 239. He was also enjoined from filing any further documents in this case because of his history as frivolous litigant. *Id.*

Certain members of Inmates Strike Back (I.S.B.) filed a motion with this

court to reconsider that determination.¹

Plaintiffs argue that “the court has no power to dismiss anyone from our rights as inmates incarcerated and neither [does] this state, nor do they have authority or reason(s) to demolish I.S.B. as [an] organization.”² “Leave to proceed in forma pauperis under 28 U.S.C. § 1915 is a privilege, not a right.” *Higgins v. Steele*, 195 F.2d 366, 368 (8th Cir. 1952). Moreover, the in forma pauperis statute, 28 U.S.C. § 1915, *requires* district courts to deny in forma pauperis status to an inmate who “has, on 3 or more occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted[.]” 28 U.S.C. § 1915(g). Reed was dismissed from the case pursuant to § 1915(g) because of his status as a three-strikes litigant. Nothing in the order prevents Reed from pursuing his legal claims; rather, it limits his ability to proceed in forma pauperis. *See Lyon v. Krol*, 127 F.3d 763, 765 (8th Cir. 1997) (observing that § 1915(g) does not prevent three-strikes litigants from pursuing legal claims, but rather limits their ability to proceed

¹ The pleading was signed by Donald Ingalls, Ramon V. Garcia, Jake Brings Three White Horses, Ralph Buchhold, Zachary Arvin, Clay D. Stubbs, and James R. James.

² I.S.B. submitted an in forma pauperis application as an organization. It was denied pursuant to *Rowland v. Cal. Men’s Colony, Unit II, Men’s Advisory Coun.*, 506 U.S. 194 (1993) (holding that the in forma pauperis statute applies only to natural persons). *See* Docket 241.

without prepayment of the filing fee). If Reed pays the \$350 filing fee in full, he may proceed as a plaintiff. Nothing in the order prevents him from paying the filing fee. The fact that Reed is the leader of an inmate organization does not exempt him from the PLRA's consequences for three-strikes litigants.

Plaintiffs also argue that the order should be reconsidered because "other members were given the opportunity to pay their portion of the payment fee by January 4, 2011; not allowing the I.S.B. chairperson the opportunity to pay the fee by January 4, 2011, of \$350, would be extremely prejudicial." Docket 265. Plaintiffs mischaracterize this court's orders. The inmates who were granted in forma pauperis status were given until January 4, 2011, to make the initial partial payment required by the Prison Litigation Reform Act and they were notified that the case would be screened pursuant to 28 U.S.C. § 1915 following that date. Nothing in any of the orders prevents Reed from paying the full amount of the filing fee before the case is screened.

Plaintiffs also assert that they have proof that the Department of Corrections is filing fraudulent lawsuits "implicating that Mr. Reed had filed such a claim with the District Court." Docket 265. In support of these assertions, plaintiffs have submitted the Order Dismissing the Case in *Reed v. Kaufenberg*, Civ 10-4026, Docket 265-2, and a letter from the Office of the Clerk dated May 14, 2010, Docket 265-3. They assert that because there was an error in the caption in the order (the order dismissing the case was

mistakenly captioned as *Reed v. Weber* instead of *Reed v. Kaufenberg*) that it has been counted as two separate “strikes.” This assertion is belied by the order denying Willie Reed leave to proceed in forma pauperis. See Docket 239. The order listed the four cases counted as strikes: *Reed v. Blake*, Civ. No.10-5001; *Reed v. South Dakota Department of Corrections*, Civ. No. 10-4010; *Reed v. Kaufenberg*, Civ. No.10-4026; and *Reed v. Weber*, Civ. No 10-4068. *Reed v. Kaufenberg*, Civ. No. 10-4026, is counted once.

As a final ground for relief from the order, plaintiffs assert that many inmates cannot pay the initial partial payment “because they are truly indigent incarcerated.” Docket 265. The inmate plaintiffs were assessed initial partial filing fees according to 28 U.S.C. § 1915(b)(1), which requires a payment of 20 percent of the greater of:

- (A) the average monthly deposits to the prisoner’s account; or
- (B) the average monthly balance in the prisoner’s account for the 6-month period immediately preceding the filing of the complaint or notice of appeal.

Thus, the initial fees that the plaintiffs are required to pay are based on the financial resources available to them. This arrangement does not violate their rights. Rather “it merely places the indigent prisoner in a position similar to that faced by those whose basic costs of living are not paid by the state” by requiring them to “weigh the importance of redress before resorting to the legal system.” *Murray v. Dosal*, 150 F.3d 814, 818 (8th Cir.1998) (per curiam) (citing *Roller v. Gunn*, 107 F.3d 227, 233 (4th Cir. 1997)).

Because none of the reasons advanced by plaintiffs merit reversing the denial of in forma pauperis status to Willie Reed, plaintiffs' motion for reconsideration is denied. It is

ORDERED that plaintiffs' motion for reconsideration (Docket 265) is denied.

Dated December 29, 2010.

BY THE COURT:

/s/ Karen E. Schreier

KAREN E. SCHREIER
CHIEF JUDGE